

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RONALD J. ALLISON,

Plaintiff

v.

STEIN PHYSICIANS, *et al.*,

Defendants

Case No. 2:21-cv-01735-RFB-BNW

ORDER

On September 24, 2021, this Court issued an order directing Plaintiff to file a complaint in compliance with Local Special Rule 2-1 ("LSR 2-1") and a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before November 22, 2021. (ECF No. 3). The November 22, 2021 deadline has now expired, and Plaintiff has not filed a complaint in compliance with LSR 2-1, a fully complete application to proceed *in forma pauperis*, paid the full \$402 filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with

1 local rules).

2 In determining whether to dismiss an action for lack of prosecution, failure to obey
3 a court order, or failure to comply with local rules, the court must consider several factors:
4 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
6 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
7 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
8 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

9 Here, the Court finds that the first two factors, the public's interest in expeditiously
10 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
11 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
12 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
13 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
14 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
15 disposition of cases on their merits—is greatly outweighed by the factors in favor of
16 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
17 the court's order will result in dismissal satisfies the "consideration of alternatives"
18 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
19 F.2d at 1424. The Court's order requiring Plaintiff to file a complaint in compliance with
20 LSR 2-1 and a fully complete application to proceed *in forma pauperis* or pay the full \$402
21 filing fee on or before November 22, 2021 expressly stated: "IT IS FURTHER ORDERED
22 that, if Plaintiff does not file a complaint in compliance with LSR 2-1 on or before
23 November 22, 2021, this case will be subject to dismissal without prejudice for Plaintiff to
24 refile the case with the Court, under a new case number, when Plaintiff is able to file a
25 complaint in compliance with LSR 2-1." The Court's order further stated: "IT IS
26 FURTHER ORDERED that, if Plaintiff does not file a fully complete application to proceed
27 *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action
28 on or before November 22, 2021, this case will be subject to dismissal without prejudice

1 for Plaintiff to refile the case with the Court, under a new case number, when Plaintiff is
2 has all three documents needed to file a complete application to proceed *in forma*
3 *pauperis* or pays the the full \$402 filing fee.” (ECF No. 3 at 3). Thus, Plaintiff had
4 adequate warning that dismissal would result from noncompliance with the Court’s order
5 to file a complaint in compliance with LSR 2-1 and a fully complete application to proceed
6 *in forma pauperis* or pay the full \$402 filing fee on or before November 22, 2021.

7 IT IS THEREFORE ORDERED that this action is dismissed without prejudice
8 based on Plaintiff’s failure to file a complaint in compliance with LSR 2-1 and a fully
9 complete application to proceed *in forma pauperis* or pay the full \$402 filing fee in
10 compliance with this Court’s order dated September 24, 2021. (ECF No. 3).

11 IT IS FURTHER ORDERED that the Clerk of Court will close the case and enter
12 judgment accordingly.

13 IT IS FURTHER ORDERED that Plaintiff may move to reopen this case and vacate
14 the judgment by filing a motion for reconsideration of this order. In this motion, the Plaintiff
15 is required to explain what circumstances delayed him from paying the filing fee or filing
16 the application to proceed *in forma pauperis* and a complaint in compliance with LSR 2-
17 1. If the Court finds there to be good cause or a reasonable explanation therein, the Court
18 will reopen the case and vacate the judgment.

19 DATED: February 28, 2022

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE